LITTLE BLUE BOOK NO. 1250
Edited by E. Haldeman-Julius

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JUDGE BEN B. LINDSEY ON COMPANIONATE MARRIAGE

In the preface to his informative book, *The Revolt of Modern Youth*, published in the fall of 1925, Judge Ben B. Lindsey, of the Juvenile and Family Court of Denver, Colorado, writes: "If the truth hurts most of us so badly that we don't want it told, it hurts even more grievously those who dare to tell it. It is a two-edged sword, often deadly dangerous to the user."

It is because he has dared to tell the truth, as his long experience as judge has given him a special opportunity to see and ponder upon it, that even many of his old friends are at this moment at his throat. For his enemies have used garbled and twisted accounts of his suggestions for a revised marriage code to confuse the clean-cut issue of an ouster suit, which, based on paid testimony, was brought against Judge Lindsey by the Ku Klux Klan in the name of Royal R. Graham, its henchman. Technically, this ouser suit has no more to do with any ideas the Judge may or may not have on "companionate marriage" than it has to do with your ideas on that subject. But so clev-

erly have his Klan enemies used his utterances to confuse the issue that in a very real way these ideas do, at this crucial moment, militate most viciously against him.

The fact that up to a very recent date fewer than 20,000 copies of *The Revolt of Modern Youth* had been sold shows how comparatively few of the people who so self-righteously censure the Judge have received their information from its proper source—his own writings. It is safe to say that not one person out of hundreds who lambast the Judge's suggestions for definite modifications of the present marriage code knows what these modifications or his much-berated suggestions are. He has repeatedly said, in print and from the platform:

> Don't you believe for a moment that I am not for the sanctity and permanence of the American home. I am. Don't you believe for a moment that I am for "free-love" and so-called "trial marriage" in the popular conception of that term. I am opposed to what I understand is the popular conception of these things. But I find that they exist under the present rigid marriage code, and *I think the rigidity of that marriage code is the chief cause of their existence.* This does not mean that I am not for a big part, if not the greater part—and certainly what I consider the important part—of our present marriage code. I heartily favor it. I am for monogamy and the love and fidelity of one man for one woman.

"Companionate marriage" would be, in fact, the exact opposite of "trial marriage," which is

commonly understood to be a temporary unlegalized union entered into with a view to a possible ultimate marriage. Companionate marriage would be a legalized union (and one to be performed as any marriage is now by either judge or clergyman) which might and often would last as long as the couple lived—although it might—even as marriages do now—prove to be only temporary. Even the Catholics—once companionate marriage is firmly established—will quite probably find a way to get around their traditional attitude, just as they do now when they wish to marry people who have been divorced. We had a perfect example of this sort of Catholic verbal jugglery in the case of Consuelo Vanderbilt, whose marriage of many years to the Duke of Marlborough was annulled by Rome. And that, if you please, was not a mere companionate marriage, either, but a family marriage of the most thoroughly approved and conventional type.

A companionate marriage, to put it succinctly, *would be a legal marriage entered into by two people with the deliberate intention of having no children for an indefinite period and in which neither would assume any financial responsibility for the other.* But should a child be born, then automatically the marriage would

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become the family marriage as we have it today, and the husband would be liable for the support of his child and wife according to the laws of the state in which he lived. (It is scarcely necessary to point out how widely these laws vary and in what a state of flux they are.) Undoubtedly, many of these companionate marriages would be, even without children, changed, by the mutual consent of both the husband and wife, into family marriages. On the other hand, if children did not come and each liked to be economically independent, they might live out their lives together in companionate marriage.

Let me be even more explicit. Let us suppose, to make the matter clear, that companionate marriage, as suggested by Judge Lindsey, were already an established institution. A high school boy and girl of sixteen, let us say, have a desperate case on each other. They feel that their love is a very real one. With all the beautiful sincerity of youth, they wish to belong to each other—openly. Therefore, instead of having secret sex relations at school and in automobiles they tell their parents frankly that they wish to marry and discuss the matter with them. The latter, we will assume, are sensible, and prefer to have their children enter into a

FAITHFUL AND ESTEEMED KLANSMAN:

A special meeting has been called for members and worthy former members of your organization to be held

Monday night, January 17th, 1927, at 8:00 P. M., in the Pythian Building located at 15th and Glenarm, Denver, Colorado.

I will be present upon this occasion to discuss with you certain conditions and circumstances now existing in your community and state. Events are moving which have a deep significance to you. In justice to the solemn oath you have taken you owe it to yourself and to your family to be present at this meeting.

THE LOYAL WILL BE THERE!

You are expected to attend this meeting. Hereof fail not. If you fail to answer this summons by your presence (Providence alone preventing), you may never be permitted to cross the threshold of a Klavern again. Can you be depended upon?

Faithfully yours,
In the Sacred, Unfailing Bond.

Fred. G. Arnold

Grand Dragon, Realm of Colorado

P. S.—This summons must be presented to the Kleagle in order to gain admittance.

WARNING—Do not show this summons to anyone. Do not talk to anyone about it. The disloyal will receive the extreme penalty.

The Fiery Summons of the Ku Klux Klan

This is a facsimile (except for the background of fiery red) of an official Ku Klux Klan "fiery summons"—an exact copy of one of the circulars said to have been handed to a Klansman, calling him to a meeting on January 17 of this year, the purpose of which was to sign a petition to recall Judge Lindsey in case the Supreme Court did not decide against him.

frank, legal marriage (in which the daughter is protected from pregnancy) rather than form a dangerous alliance, which, for the boy especially, might—probably would—lead to other, less wholesome alliances with a less desirable type of girl with whom he might not even pretend to be in love. With the parents' consent (and accompanied by one of them) the young couple would go for their license. (If an older couple, they would be asked, quite as a matter of course: "Which do you intend to have—a companionate marriage or a family marriage?" But if the couple were very young, a companionate marriage would be the only kind they would contract.) The license for a companionate marriage granted, the girl and her mother (as well as the boy) armed with it, would go to a well-conducted birth control clinic. *For companionate marriage will be practically impossible until birth control can be taught openly and in a scientific fashion.* (That is the chief reason the Catholics are so bitter against it.) At this clinic the young people would find a fresh, crisp, white-capped nurse who would give them the proper information and then and there would outfit the girl. It's a safe bet that two-thirds of you married women who read this article do not know exactly to what I refer

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and because of the laws of this puritanical country, I cannot tell you. Out of some five hundred married women who followed instructions, however, in a well-conducted clinic in one of our largest cities only eleven conceived. And there were definite reasons for believing that these eleven pregnancies were due to carelessness. If you think it blurs the beauty of young love to mix up clinical knowledge with it, I can only point out that while this is perhaps true it is infinitely preferable to the sordid, ghastly experience so many young girls go through on an abortionist's table. And until birth control is legalized, companionate marriage would be as risky as the present illicit unions now so common. This birth control information, you must understand, would not be given out at these clinics except to married men and women or to ones who were about to marry.

With this information and secure in the knowledge that if they used it properly they would have no children, our boy and girl would marry. They could have any kind of a wedding they wished. Veils, flower-girls, wedding marches, and so on, could all be a part of it, if it pleased them. For they would be entering into a real marriage. That is one point which

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it seems very hard for many people to grasp. They would be just as thoroughly married as any husband or wife who reads these pages is at this moment.

Then what would happen? If the boy and girl were still in high school they would go right on with their studies and each continue to live at home. The girl's parents still would be responsible for her, the boy's parents responsible for him. Neither would be responsible for the other. This would be just as true if they went on to college. The girl might even live at a sorority house and the boy join a fraternity—if they were that type of young people—or they might take a room together and pool their mutual resources—as is so frequently done by two boys or two girls. They would be in the truest and fullest sense—companions. This relationship would continue while they were getting their professional training, and until the husband had reached the point where he could feel justified in carrying the financial burden of a wife and children. When he did, the marriage, by a mere form, and by the mutual consent of husband and wife would be changed into the family marriage with which we are familiar.

Surely no one would deny that there are

thousands of young working people as well as young men and women in universities and early professional life unable to take on the responsibilities of a home and children, who would be of much more value to themselves and to society if they were married. Under the present code they have the choice of remaining single—which in a large proportion of cases means that they have secret, unlegalized unions with all the hypocrisy and actual physical danger such unions involve—or of marrying before the young man is able to carry the financial burden.

But now, suppose that after a year or two the young couple find that they are not fitted for a permanent union. Then, all that would be necessary to dissolve it would be for them to go before a judge and state that their wish to do so was mutual. Neither could dissolve it, however, without the consent of the other—without proving good and sufficient reason. Of course, a logical result would be that in family marriages as well as in companionate marriages the fact that *both* husband and wife wished to terminate the marriage would in time become the only reason required for such termination. Quite probably a good many young couples would make one, possibly two, unions

before they entered upon the final one. But the chances are that in most cases this final one entered upon in their twenties with a full knowledge of all that marriage meant would be infinitely more satisfactory than are most present unions. If it is true that many of these companionate marriages would be temporary (as no opprobrium would attend their termination) it is quite as true that thousands of marriages today are temporary. If you doubt it, consult the court records of divorce and separation cases. As Juge Lindsey himself has put it:

> Companionate marriage would put honesty and decency into the very conditions that under our present marriage system have all the disadvantages and dangers predicted for a companionate marriage, but none of its advantages. Consider our present marriage code: a young couple can get married by a minister today and at any time thereafter they can trump up, as they frequently do trump up, a ground for divorce, and by mutual consent they fix it up with their lawyers to go into court and get a divorce. The thing on the face of it has the appearance of legality, but underneath, it is hypocrisy and fraud, and every lawyer at the Bar knows it. Most of the divorces now are by mutual consent. They are fixed up in the lawyers' offices, and not in the courts. Many of them are kept secret in those lawyers' offices. They are skilfully and cleverly concealed. It is more often the case with the rich and influential. They are divorced by mutual consent, without even going to the courts. They just tie up with their sweeties on the side, and how much chance is there for childhood or decency in this sort of thing that is going on under the present rigid marriage code? They think it is all in the interest of morality. As a matter of fact, what they are doing is causing

immorality, licentiousness and crime all over this country. They don't mean it that way, but such is the result.

The companionate marriage, as Judge Lindsey points out, is really an answer to our present economic conditions in which men and women have become competitors. A healthy, childless woman is just as capable of supporting herself as a healthy man . . . at least society is so decreeing by the facts as we face them, and in Judge Lindsey's opinion companionate marriage would, among other things, do away with a lot of the abuses of alimony under our present system, in which many a woman marries with the thought actually in mind at the time of the marriage that if it doesn't work she will find a way under the present alimony laws to penalize the husband for their mutual mistake.

Now I hope you have the idea clearly in your minds. There are really just three points to companionate marriage: (1) that in the marriage each would have the status of a single person in property matters, although their sex relationship would be legalized and the legal status of any possible child protected; (2) that upon entrance to marriage, each would be thoroughly instructed in birth control; (3) that the mutual consent of the couple would be the

only requisite for the termination of the marriage.

Of course, beyond the shadow of a doubt, it is the birth control point which most people find, or pretend to find, so shocking. This attitude is the more absurd on the part of even conservative fathers and mothers when one realizes how consistently—although often quite ignorantly and ineffectually—birth control is practiced by the very people (Catholics included) who protest horror at the idea of its being scientifically taught. If you will think over the young couples you know, several examples of marriages that, to all intent and purpose, are companionate marriages will inevitably come to your mind. The only difference between these marriages and the marriage proposed by Judge Lindsey is that in most of those at present the birth control methods are more or less sketchy, and that the young man is legally responsible for his wife and could be lawfully penalized if they should have a domestic break. Judge Lindsey, you see, believes that married people should have children because they *want* them, that they should live together because they *wish* to live together; that if they do not want children they are better off without them, and that if they are

living together simply because they are trapped, they would be much better apart. He realizes, too, that many young people are biologically mature and much better off mated years before they are mentally mature and ready to become responsible for a family. (The afternoon I visited Judge Lindsey's court two of the seventeen-year-old girls asking for annullment had passed through pregnancies. In each case the boy husband and both sets of parents—one of whom of course testified that she or he had never consented to the marriage—were also asking the annullment.)

And now a word about "The Temple of Venus" which, of all the ideas of Judge Lindsey, has been most outrageously misrepresented. You must understand that he is essentially an idealist—although a practical one as the many laws he has fathered bear witness—and his personal experience, for he has perhaps the most wholly happy marriage I know of—has emphasized his lofty and beautiful conception of love. There is in him, too, much of the inarticulate poet. What he meant by his temple of love was nothing more nor less than a school to which mothers and fathers, as well as young lovers, could come alone, together, and in family groups for plain, clear and thor-

ough sex instruction—to quote himself exactly: "a sensible scheme of education by the city or state to better equip youth for parenthood." In his capacity as family judge, all the petty as well as all the more tragic types of domestic difficulties, pass before him to be straightened out so often—almost miraculously as it sometimes seems as one watches him—by his infinite tact and tender wisdom. He has stated often that he has been almost appalled by the proportion of difficulties that take their roots in lack of sex adjustment and proper sex information.

But so contaminated is the public mind that to it the mere word "Venus" suggests, instead of Beauty and Love, impropriety or something a little off-color. Recognizing this, Judge Lindsey has changed the name (but not the thought or the purpose) of this temple, as he conceived it, to "The House of Human Welfare." I was amused to find that more than one person who had been positively rampantly outraged at the idea in its first poetic phrasing did not at all object to it—in fact, highly approved it!—in its changed, more prosaic word-garment. Funny? Well, it would be if it were not so pathetic and such a biting comment on the modern attitude. The American

public cannot yet discuss sex without becoming hysterical and feeling that it should hide shamefacedly in a corner.

Now, before you can understand to just what extent Judge Lindsey's enemies have used the misrepresentation of these ideas against him—how diabolically and unfairly they have used them, you simply must get a clear concept of the origin, history, and animus of the ouster suit itself, and of the man, Royal R. Graham, whom the Ku Klux Klan wished to put into the highly specialized and difficult Juvenile Court, dependent in its very essence on the integrity and unimpeachableness of the Judge who presides over it. For, to put it plainly, this Royal R. Graham was a crook.

I must ask you to project yourself for a moment back into those ugly days when the Ku Klux Klan was at its height. In 1924 it was at its very zenith in Colorado. In its power it had attempted to arrogate to itself the very functions of government. For all practical purposes it *was* the government. In those days when "Doc" Locke (Dr. John Galen Locke, a big man with rather a squeaky voice), selected Graham to run against Judge Lindsey, each candidate, from Governor Morley down, had to "qualify" for his position by promising to take

his orders from the Grand Dragon of Colorado. With all his might Judge Lindsey had fought, and was fighting, the Klan. It did not purpose to permit him to enjoy either the very modest salary of $4,000 a year—or the genuine opportunity for usefulness which the Juvenile and Family Court of Denver afforded him.

But to their angry astonishment, against heavy handicaps, Lindsey was re-elected. Denver is, by a big majority, normally Republican, and as many vote a straight ticket this enormous Republican majority naturally carried along other candidates—including Lindsey's opponent. Lindsey ran on the Democratic ticket, but did not have a solid Democratic backing, for the organization of this party was shot through with Klan members. (He was the only Democrat opposed by the Klan who was elected.) Moreover he had against him the powerful city hall machine—a tremendous force with its hundreds of policemen and city employes under the Klan mayor. Add to this that the Ku Klux Klan proper, which controlled the Republican ticket, was powerfully organized in every precinct; that the big utility corporations, such as the city railroad, were against him because of a long-standing pitched battle; and you can understand why old-time

politicians, in speaking of his election, frequently referred to it as "a miracle." Lindsey had literally nothing in his favor except his own sterling character and the record of his past achievements. It is no wonder that he did not win by the big pluralities which had marked his other victories. (This is his 27th year in this office.) Defeat didn't set well with the Klan and it lost no time in attacking the Judge. The election took place on November 3, 1924, and on January 15, 1925, Graham—at the Klan's command—through counsel, Mr. E. M. Sabin, instituted proceedings against Judge Lindsey before Judge Charles C. Butler, now a Justice of the Supreme Court, but because he heard the case or part of it in the lower court disqualified, as he of course recognizes, from voting upon the motion filed February 8th for a rehearing.

On January 24, 1924, counsel for Judge Lindsey filed a motion to dismiss the case for lack of jurisdiction. (This was over two years ago, remember, before Judge Lindsey's book, *The Revolt of Modern Youth*, in which companionate marriage is discussed, was even published.) This motion was argued and taken under advisement by the court on January 30th, and on that day Mr. Sabin, evidently realizing the

soundness of opposing counsel and foreseeing that the motion would be granted, instituted for Graham a second suit before Judge Julian Moore. On February 2nd, Judge Butler did, in fact, hold that Graham had brought the wrong kind of an action, and therefore simply threw the case out of court. The other case before Judge Moore was then brought and came to trial on March 31, 1925.

It lasted until April 17th. In this second suit Graham was joined by a taxpayer—an iceman by the name of Laney and purely a nominal figure. It was brought on a writ of "quo warranto," which in plain language means "by what authority do you hold your job?" "By virtue of my election certificate," returned Judge Lindsey, through counsel, of course, and all in approved legal fashion. And the fight was on in earnest.

Now what you must keep clearly in your mind is that this contest was grounded principally upon an affidavit given shortly after the election to Chief of Police Candlish by a witness, William Unter. It is on his testimony, which Unter admitted in open court he had been paid for swearing to, that Judge Lindsey was decreed ousted.

If you think I am speaking too unguardedly,

let me refer you to page 151 of the published transcript of the case. I quote from it verbatim:

Mr. Philip Hornbein, counsel for Judge Lindsey, questioning: Well, don't you know the reason he (Mr. Martin, an accredited representative of the Ku Klux Klan) gave you that $100 is because you made that statement to the Chief of Police and is because he expected you to favor him in this case against Judge Lindsey?

Unter: I guess that is the reason for it. Yes, sir.

Unter testified that:

(1) He marked fifty or sixty blank ballots of a bunch of some 157 ballots. (This, as Lindsey's counsel pointed out to the Supreme Court, would be against all possible percentage averages of blank ballots. In fact, when the trial judge counted all ballots in every precinct in the city, his findings as to averages of blank ballots precluded such a possibility.)

(2) That he marked an equal number for voters in the voting booths. (One of Graham's own witnesses, Thomas L. Otter, the Republican watcher who was at the polling place from seven o'clock in the morning until nine-thirty at night, testified that although he was watching Unter and following him around all day long he saw him mark only one ballot in the voting booth during the whole day, and in fact, go into the voting booth only three or four times.)

It was also charged that not only had he marked the ballots but that the ballots had not been correctly counted, that there had been confusion at the polls, and the election judges had been lax in enforcement of rules regulating illiterate voters. In fact, when the case came on for trial the almost universal charge of fraud, corruption, and mistake had been broadened so as to include every one of the 211 precincts in Denver. Judge Moore ordered a recount, and it was some recount! Counsel for Judge Lindsey, in their brief to the Supreme Court, have stated it so succintly that I quote:

> Every ballot of the 89,263 ballots which were cast at that election were recounted; every mark in the place provided for candidates for juvenile judge was subjected to the most minute examination and the closest scrutiny; the court room was converted into a polling place, and watchers, clerks, and tellers were appointed and sworn. One by one the ballot boxes were brought in, each was opened in the presence of the court and the ballots recounted by the sworn representatives of both parties to the controversy. *The slightest irregularity or the most trivial imperfection in the marking of a ballot was made the basis of an objection.* Such questioned ballots were laid aside for further judicial inquiry. 102 ballots, each marked in the square opposite the blank space beneath the name of the respondent, were rejected, although the court found that it was clearly the intent of the voters to vote for the respondent [Lindsey]. With all of the deductions, the full recount nevertheless showed the election of the respondent, and the court so adjudged.

Judge Moore, a capable jurist of long experi-

ence, was thoroughly satisfied. Indeed, he was so satisfied with the correctness and authenticity of the election after the recount, that he *held no defense by Judge Lindsey, the defendant in error, was necessary, and non-suited the case.*

For this reason and this reason only, Judge Lindsey made no defense. *Never then, or later, has he been permitted to introduce evidence as he was and is amply prepared to do to prove the justness of his case.* He and his court officer, Charles Francis, were not even given an opportunity to deny Unter's statement that Francis had given Unter $25 and had promised him $150 if he would "work for Lindsey." He (Unter) did not claim, and at no time was it claimed, that Lindsey had asked anyone to mark ballots for him. With all their effrontery they did not quite dare accuse Judge Lindsey of that. I ask you calmly, did you ever hear of such a situation? A man is denied a chance to present a defense because the trial judge considers the case against him too flimsy to warrant a defense, and yet, on that flimsy evidence, without being given a "day in court" (as the lawyers call it) he is ousted from a position in which he is invaluable, not only to Denver, but to the world. It is incredible, but

nevertheless those, my friends, are the exact facts.

Perhaps this is as good a moment as any in which to let you visualize Unter. (He is now in Los Angeles, to which city he was given his transportation, and when he left Denver, $55, by the Klan.) He has been described to me as looking like a "long noodle in a suit." At the top of the noodle is a thin white face. I gather that he is not really a vicious sort, Unter, but weak—pitifully weak. During the trial it was necessary to have men—Morrison, Kemper and others—guard him day and night for fear that he might make a full confession. I have seen with my own eyes a letter from Unter written in pencil on pink paper to one of these guards. It was an answer to a communication from the latter in which he had told Unter that he and one of the other guards were contemplating bringing suit against John Galen Locke (who, as I have told you, was at the time of this trial Grand Dragon of the Klan in Colorado). It seems a large part of the six dollars a day promised them has not yet been paid, and as Unter also has not received the compensation promised him—pretty certainly supposed to be $3,000—the two chaps thought he might like to join with them in some way

to get what was promised them for their services and what they considered to be legitimately due them. It may interest you to have me quote verbatim from this letter (which has never been produced in court, but which, if the Supreme Court should remand the case to the trial court, most certainly *will* be produced):

> Howard, you, for one, know what I have endured at the hands of some people who had me completely at their mercy. I have paid, yes, paid dearly, for my folly, and I do not contemplate any action whatsoever to receive some form of retribution. For what would one say? "That dirty Jew." No. I believe I have had enough of the mess, and at this writing, although I appreciate your honest efforts in my behalf, no one knows better what I have gone through than you. Money could not heal the wound which I have in my heart.

But the vacillation which seems ever to be the undoing of this young man—he is, I believe, in his late twenties—reasserts itself, and he adds:

> Please do not consider this as final, Howard, as I am writing this letter immediately after having read your letter.

It was by means of this weak tool that in order to depose Judge Lindsey and have their own man elected, the Klan was able to have 481 voters disfranchised. Apparently all that anyone in Colorado needs to do, if he wishes to have a precinct thrown out, is to get a wit-

ness who for remuneration will swear that he has fraudulently marked ballots. Don't take my word for it, for I am not versed in legal technicalities. Here is the combined opinion of four of the ablest lawyers in Denver:

> If any election can be adjudged invalid and the entire returns discredited because of the evidence in this case, then all that will ever be necessary to invalidate an election in any precinct is to go out and hire a witness who will swear that he marked the ballots. No matter how incredible his testimony, or how completely he is discredited by all the circumstances, the court would be bound to accept the same and throw out the votes of honest voters. This in the last analysis is the theory of the prosecution in this case.

I submit that it would be impossible to find a more flagrant example of the miscarriage of justice. And I can assure you that the people in that precinct, J-6—a strong Lindsey precinct—get hot under the collar whenever they think of it. It was the throwing out of all their votes that finally gave Graham a slight majority.

When Judge Moore non-suited the case, everyone—or rather, I should say, the general public—supposed it was the end of an unpleasant and highly disgraceful business on the part of the Klan. For there are few in Denver who do not understand the animus back of the whole thing. They know very well that even the Klan had no complaint against Lindsey except one—he fought their organization. For that reason and

for that reason only they hated him. And that white-robed band is nothing if not persistent. It intended to control everything and it is a safe deduction from Royal Graham's former corrupt record—of which I now shall tell you in some detail—that he wanted the job for the money that he could make out of it on the side. For, as any moron can see, if one wishes to be corrupt in that office, it is fairly juicy with opportunities for blackmail.

And Royal R. Graham needed money to cover up his thefts. He needed it so badly that, finding himself unable to get it, he committed suicide. I dislike very much to speak ill of the dead, and if I go into his unsavory character it is only because his wife, by reopening the case he brought—or that was brought in his name by the Klan—against Judge Lindsey, after it was dismissed by the Supreme Court of Colorado (as I shall explain presently), has to all intents and purposes, made him again a living person, or at least one with whom Judge Lindsey still must reckon.

On the evening of the Wednesday Graham was found dead, with every evidence and appearance of having killed himself, he was to have appeared at 8 o'clock at the University Club in Denver before the Grievance Committee

of the Colorado Bar Association. He had already appeared before the Grievance Committee of the Denver Bar Association, but what the charges against him were cannot be revealed to outsiders because the State Grievance Committee had not yet passed on them, and consequently the charges had not yet been filed and passed on by the Supreme Court. But Mrs. Graham is suing the Occidental Life Insurance Company of New Mexico for the insurance which the company held that, by his suicide, her husband forfeited (he had taken out the policy less than a year before his death); and this company, in the defense of its case, found it necessary to show definite reasons which might have compelled him to his desparate act. I was able, therefore, to find in the transcript of record, No. 7564, in the United States Circuit Court of Appeals, some of the definite charges he would have had to face that Wednesday evening before the State Bar Committee.

It seems, according to a complaint filed by some Illinois lawyers, on July 11, 1925, that Graham had received $4,000 from certain heirs which he had failed entirely to turn over to their estate. (It is amusing to know that these heirs trusted him with the money while he was

attending a Presbyterian convention — for Graham was a very religious man, and a great church worker.) Also, Mrs. Clara H. Graham, a widow, of Georgetown, Colorado, and no relation of Mr. Graham, had complained that he had obtained from her $7,500 under false pretenses. He had told her that, among other things, Edwin H. Park, a Denver lawyer, was going to show him up for not accounting for funds in the estate of Robert Orchard Old in Clear Creek County, and that if Park did show him up he would not be able to beat Lindsey in this 1924 election. It was true enough that Park was after him. He was after him to make final settlement with the Orchard Old estate and to refund $600 which had been left in court and which Graham had appropriated. But instead of straightening out his various embezzlements it seems that Graham had used Mrs. Clara Graham's money for other purposes for which she would not have lent it to him. (She felt obligated to him because of a service done for her many years ago, and was willing, it appears, to help him save himself from disgrace but not to have her funds melt away into oblivion.) At any rate, hers was one of the charges before the bar committee.

Also the insurance trial brought out that

Judge Charles J. Nicholas, who succeeded Graham as Judge of Clear Creek County, got after him to make good a balance of $371.53 withdrawn from the estate of Joseph Trudeau, by means of a forged check (a facsimile of which was published in the *Denver Post* and is there on file for anyone to see).

On September 7th, which was Labor Day, Graham seems to have been desperately and tragically busy trying to round up some money or promises by means of which he could straighten out his various crooked deals. Evidently he must have considered the matter hopeless, for he delivered a bunch of papers to a friend, Catherine Nash, and on the 8th, the day following, she found underneath the second paper this note, post-dated the 9th: "Goodbye. Royal R. Graham."

His family—Graham had been married twice and had two children by each wife—was away at the time, so no one missed him until the morning of the ninth. He did not come to his office—as a deputy city attorney he was a prosecutor in the police court—and Richard T. Wilson, believed to be also a member of the Ku Klux Klan and an employe of the City Attorney's office, went to Graham's house at 11 a. m. and found him dead in the kitchen. The

coroner returned a verdict of probable suicide but would hold no inquest. Soon the Klansmen gathered together and a story was started of a ladder that had been placed against the house. His friends wished it to be inferred that he had been attacked upstairs and killed and then placed in the kitchen to make the affair appear one of self-destruction. But there were no bruises on him, the doctor in the case stated that he died from carbon monoxide poisoning, and the record of his dishonesty was so ominous that no one—even the bitterest opponents to Lindsey—really doubts that he did indeed commit suicide.

When Mrs. Graham first brought suit against the Occidental Life Insurance Company it was able as a non-resident to ask to have the case tried in a Federal Court. The result was a hung jury, eight to four for the Insurance Company, so rumor has it. The second time the case was tried her two little children, four and six years of age, were used in a very telling fashion, as was the fact of her widowhood, and the jury found for her, on the ground that no suicide had been *proved* (the burden of proof being on the insurance company) and the supposition being that it is against nature to take one's own life. As one juror is reported as

having said after the jury was dismissed, "We all knew he'd committed suicide, but they hadn't proved it." The case has been appealed and is now pending.

Meanwhile, it seems Mr. Sabin has been having a fine time trying to collect money from someone for his services. It seems that he first became Graham's lawyer at the behest of Dr. John Galen Locke, and Mr. Sabin claims that as he was employed by Mr. Locke it is to him that he must look for his fee, and Sabin is even now suing Dr. Locke for it. A preliminary hearing has already been heard, and I have read the deposition of Dr. Locke—now at outs with the Klan. In this deposition he stated that Mr. Sabin was employed by order of the head office of the Ku Klux Klan at Atlanta, Georgia. Locke's whole defense is based on the contention that he was only acting for the Ku Klux Klan when he hired Mr. Sabin to prosecute Judge Lindsey for Graham. He explains further in this deposition, of which anyone can get a copy as it is a matter of court record, that Mr. Henry May, the attorney for the K. K. K., referred the matter to the proper Klan board on which were Clarence J. Morley, already elected Governor of Colorado by the Klan when the Graham suit against

Lindsey was brought; and John Martin, the very man who got Unter to testify against Lindsey, and to whom Unter was paroled.

So there you have Mr. Graham, my friends, a man picked by the Klan, nominated by the Klan, elected by the Klan, and backed by the Klan which paid for his suit—that is, which authorized it, althougn it has *not* paid for it. Remember, too, that at the very time Graham ran against Lindsey, the former's misdeeds as a Judge of Clear Creek County were common talk and common knowledge.

It had reached the point where one of the leading bankers of Georgetown, Colorado, when he had a case for his bank pending before Graham in the county court, dared to ask for a change of venue on the ground that Graham would be prejudiced because he had been involved in a difficulty with the bank on account of getting money from it on false pretenses. To be sure, Graham promptly punished the gentleman for making such a charge by declaring him guilty of contempt of court. The banker pleaded "the truth" and plainly called Graham a crook. (In August, 1924, the Georgetown *Courier*, his home town paper, referred to him as a "robber of widows and orphans.") Graham called in Judge Whitford (now one of

the Supreme Court judges who have decided against Lindsey) and also Mr. Sabin (who for many years has been a very close friend of Judge Whitford) to be jointly each his *amicus curiae* (his lawyers, to put it in simple language). The result was that Graham fined the cashier for contempt of court and the banker promptly took it to the Supreme Court of Colorado, which held that inasmuch as Graham did not (because he could not!) deny the irregular act of which the banker said he was guilty, the banker had the right to set up the truth as grounds for change of venue. All this, remember, happened while Graham was Judge of Clear Creek County.

I was simply appalled by the number of tales of his crookedness poured into my ears. There were far too many of them to check carefully in a limited time and therefore I cannot repeat them all to you, but I heard so much about his theft of sheets from his court books when he held this office that I went for confirmation of the stories direct to Mr. Arthur M. Stong, who was State Auditor of Colorado at the time the sheets disappeared. He is a frank, fearless man and gave me the whole story of this particular episode.

The county commissioners had for some

time suspected Graham's honesty, and one of them especially, J. W. Cunningham, was worried about the state of affairs. The State Auditor therefore sent down two deputy examiners from his office. Judge Graham asked for sixty days in which to straighten up his books. At the end of that time he and the County Commissioners met with the State Auditor in the latter's offices in Denver, and Graham begged for thirty days more, explaining that it was literally impossible for him to straighten up his books in less than that time. Mr. Stong granted the extension but reminded him that he then would have had three months in which to get matters in shape, and warned him that he would better drop everything but the business in hand, as there would be no more extensions.

On a Monday morning (at the end of the ninety days) the two deputy examiners went out to give the books a thorough audit. Now, in spite of the auditor's warning, Graham had been in the latter's office the Friday before pleading for more time, and his request had been firmly refused. What was Mr. Stong's surprise, then, when at ten o'clock Monday morning he received a telephone call from James Mullins, one of the examiners, who ex-

plained that it was impossible to audit the books, as they had been partly destroyed by theft on Saturday night.

The strange thing about this burglary—the safe was blown and some hundred or more leaves out of the fee books and court records were stolen, never again to be found—was that Graham did not think it important enough to tell anyone about it until he and the County Commissioners were out together Sunday morning looking at some highway that needed their mutual attention. He insisted to the County Commissioners that the safe had been opened by someone who thought he had liquor hidden in it! (Even so!) Do you get the sequence? Friday he was told by the State Auditor he could have no more time. Saturday night the safe was robbed and the leaves stolen out of the record, Sunday morning he very casually told the commissioners of the theft, and Monday the examiners arrived and found it impossible to go on with their auditing.

Whereupon the State Auditor conferred with then Attorney General Keys, who suggested that the County Commissioners of Clear Creek County and Graham hire competent auditors to bring the records to date. This was done and it took them three or four months to do it.

Inevitably discrepancies resulted which may involve thousands of dollars of litigation for the next ten years, for records, extending back fifty years, were thus put on the blink. It was a fine kettle of fish and everybody in any way involved in it was forced to admit it. And the man, mark you, who was responsible for the whole mess was the man chosen by the Klan to run against a man whose integrity was unimpeachable, who had devoted the best years of his life not only to the service of children and of misunderstood and mishandled grown-ups, but also to the welfare of the city of Denver itself. This is the man for whom, on January 24th of this year, Judge Lindsey was decreed ousted. It is enough to make the very gods hold their sides with bitter laughter.

That isn't all. Not only was Graham himself an indisputable crook—a veritable dyed-in-the-wool crook—but he was surrounded by downright criminals. The sheriff who served the Graham papers on Lindsey to take his office away is even at this moment in the penitentiary at Canyon City, Colorado, for embezzlement from Denver County. The man whom it was generally understood—although not authoritatively announced—Graham had selected for his probation officer, Joseph G. Bushnell, is also

in the penitentiary. This gentleman, however, was cut off a little different strip of cloth. Indeed, it was because he was in the veteran's bureau that he had a chance to be appointed guardian of an insane veteran, whose money he unfortunately appropriated. Those pets of the K. K. K. just simply couldn't keep their fingers off what didn't belong to them.

This Joseph G. Bushnell, to whom I have just referred, was, it seems, formerly a close friend of Dr. Locke, and "on the inside" through the whole affair. On February 22, 1927, Mr. Bushnell is reported to have given a correspondent of the Denver *Evening News* an interview in which he permitted the latter to see an affidavit which he (Bushnell) had sworn to before a notary public, Josie A. Roche. The newspaper carried the story in big headlines: "LINDSEY FRAMED, CONVICT ASSERTS IN AFFIDAVIT. *Election Fraud Charges, That Led to Ouster Verdict Against Judge, Concocted by Locke's Agents, Bushnell Alleges in Sworn Statement.*" Here is the affidavit:

I, Joseph G. Bushnell, being first duly sworn, depose and say that I was instructed by Dr. Locke to accompany John H. Martin on a trip on the evening that Martin took the affidavit from Unter in Chief Candlish's office in the Denver city hall. Upon arrival at the city hall, Martin and I remained in his car until Unter appeared with another man whose name I do not remember, on the

corner. We joined them and proceeded to Chief Candlish's office.

Jack Martin took the boys to one side in the custodian's office and talked with them privately in order to assure them that they would be given all protection possible. Unter's chief worry was concerning his sister, who was either a precinct judge or watcher, and the fact that she had a family to support.

On the close of this conference, the four of us went into conference with Chief Candlish, at which time the chief worded the affidavit for Unter, which was duly signed by Unter and acknowledged by myself as notary public.

Unter then was placed in the custody of two or three of Dr. Locke's men with instructions from Jack Martin, who was in daily conference on the matter with Dr. Locke. These men were quartered in a hotel and meals were carried to them. Their guards were Eddie Morrison, his brother-in-law; Kibbling, and a man by the name of Wagner.

At various times from the date of the signing of the affidavit, to the date of Unter's tiral, Morrison appeared at Dr. Locke's office in search of Martin to obtain finances. He informed me personally several times that he was broke and needed money to carry on this work.

Unter's house rent was paid as well as his grocery bill by Jack Martin, under Dr. Locke's instructions. Eddie Morrison and his brother-in-law were later sent to Fort Morgan at the time of Unter's trial and their expenses were paid by Dr. Locke in order that they might not be available in case information should leak out that they had been guarding Unter and his pal.

Mrs. Unter kept worrying Jack Martin for money for rent and groceries and after the trial tickets were purchased by Martin to send others of the family to California. They were rushed out of the state. After their departure several boxes of household goods were forwarded to California by Martin.

Approximately two months later Edmond Morrison presented a bill for services rendered to Dr. Locke by mail, the amount of which was $600 or $700. During the conference in Chief Candlish's

office at which time Unter signed the affidavit, Martin assured him many times and in the presence of us all that Dr. Locke and the organization would stand back of him, that everything would come out all right, that he would be taken care of, that he would be given every protection possible, and that his family would be taken care of while he was in jail.

This confession was made public the day after the Supreme Court denied Judge Lindsey's motion for a rehearing, but the main facts had been clearly brought out on cross examination by Lindsey's counsel at the trial.

Now, it doesn't take a very astute person to see why Mr. Sabin has been so interested in having Mrs. Graham win the ouster suit. As yet the lady has not received her money from the Occidental Life Insurance Company (Mr. Sabin is representing her in this suit also), and as yet Dr. John Galen Locke has not been compelled—and may never be compelled—to pay Mr. Sabin for the services which the latter rendered at his behest for the Klan. Sabin is, so to speak, in the soup. But if the ouster order is issued, by the time you read this, Lindsey will be compelled to pay Mrs. Graham nearly $3,000, the salary Graham would have earned from the time he would have gone into office until he was found dead with the gas jets on.

Undoubtedly Sabin could have her ordered to pay part of it to him, for however unworthy the end, his legal services certainly have been plentiful and well enough rendered. People in Denver, even those momentarily estranged from Judge Lindsey solely because of his largely misunderstood suggestions for a modified marriage code, make no bones about saying—justly or unjustly—that the whole suit has been kept alive in part by Sabin's very natural impatience for his unpaid remuneration. Be that as it may, it is a fact that overtures were made to Judge Lindsey on two different occasions—overtures *not* purporting to come directly from Mr. Sabin but overtures which none the less bore the stamp of coming from an authentic and dependable source. At one time the offer was to settle the whole difficulty so that the suit might be dismissed for $1,000, which would be paid to Sabin as attorney for Mrs. Graham. But later (1926) the ante had been raised and Judge Lindsey was informed that $2,000, but not a cent less now, might terminate the whole affair in his favor. This was about November 1st, just before the hearing on the eighth, and it certainly looked as if some of Sabin's friends felt pretty sure of their stand with at least one of the judges—Greeley W. Whitford, formerly

amicus curae for Graham and associated with Sabin.

For when the hearing did come up, the rumor is that the court was locked three to three. Justice George W. Allen, who had not been re-elected, refused to sit on this case or on any other (and Judge Charles C. Butler, as I have explained to you, because of his connection with the first stage of the case, is now disqualified to sit). The supposition is that the three who held out for Lindsey did so on the ground that the court had no right to open the case after it had been dismissed. Finally, however, one of the Judges seems to have been won over to make what became the majority opinion, and the decision was rendered.

To go back a little so that you may have clearly in your minds the unbroken sequence of the court procedures—after the case was non-suited by Judge Moore, Graham and Laney appealed it to the Supreme Court and it was there when Graham died.

Now Locke had a falling out with the Klan and started—or was influential in starting—the Minute Men. In his new status and bitterness toward the Klan he actually preferred Lindsey in the job to any one Mayor Stapleton, a Klansman, might appoint to succeed the ghost

of Graham. Therefore he ordered Laney—always a mere figurehead—to ask to have the case dismissed and on December 21, 1925, Laney, through newly-employed counsel, filed a motion in the Supreme Court to that effect. And on that very day the Supreme Court did dismiss the case. Doing so, in the opinion of many jurists, including two of the very judges now on the Supreme bench of Colorado (Chief Justice H. P. Burke and Justice John Campbell) made it impossible ever to reopen the case.

However, it *was* reopened, for on January 2, 1926, Mr. Sabin, on behalf of Mrs. Graham on the plea that *she had a property interest in her husband's salary which she should have received*, filed a motion that she be substituted in the litigation in the place of her husband. Things have come indeed to a pretty pass when the majestic *quo warranto* is invoked without the slightest pretense of serving the people but simply because a private citizen wishes to collect money. As the *Denver Post* in its column, "That's That," pointed out on January 26, 1927, that she should ever receive this money is most unfair:

> This may be the law [the editorial runs], but it doesn't seem common sense. Judge Lindsey was given a certificate of election. And he did the

work for which he received payment. No one will or can question the legality of his judicial acts. He was the legal juvenile judge and will continue in that capacity until the final court order is entered removing him. Is he to be required to donate his valuable services to the city?

The law fixes the salary of the juvenile judge. Whoever performs the duties of that office should be entitled to the salary. And having collected his pay, he ought to be entitled to keep it.

This is a sentiment expressed freely in Denver, but the consensus of legal opinion seems to be that if the ouster order is made final, Judge Lindsey will have to pay this back salary to the estate of his Klan opponent, the deceased Royal R. Graham. It is on the basis that he would thus be deprived of property without due process of law and that to do this without being given an opportunity to defend himself would be unconstitutional, that Judge Lindsey's counsel hope to be able to appeal the case to the Supreme Court of the United States.

For, on April 19th, 1926, the Supreme Court of Colorado held Mrs. Graham *did* have a right to be substituted in the litigation in the place of her husband, and made the order setting aside the dismissal of the case and so substituting her. In the winter the suit came on for argument, and on November 8, 1926, was taken under advisement, with the result that on January 24, 1927, the Supreme Court reversed the

judgment of Judge Moore, and declared that on November 3, 1924, not Judge Lindsey but Royal R. Graham, the Klan candidate, had been elected Judge of the Juvenile and Family Court.

Commenting on it (as reported in the *Denver Post*) Judge Shaefor said:

> It [the record of the case] reveals a most regrettable and astounding condition which prevailed during the election day and evening—a condition which must receive our most emphatic disapproval. The whole conduct of the judges and clerks of election in that precinct shows gross negligence and a total disregard of their official duties. Doubtless they were intimidated and made afraid by the boisterous and riotous conduct of men who were permitted to gather in the rooms and voting booths, but this does not excuse them, nor did it relieve them of the duty to observe the law in the conduct of the election. If this testimony [including the paid-for testimony of Unter] is to be believed, great disorder and confusion prevailed there on election day from 8 o'clock in the morning until the last ballot was counted in the evening.

This is precisely what the counsel for Judge Lindsey claim they can prove was not the case. It appears in this case that every person who voted in this precinct was a legal voter; that every one was a qualified elector of that precinct; and that no repeating was tolerated or spurious ballots deposited in the box. In fact, the election in that particular precinct —J-6—was carried on in a rather more than usually orderly fashion. Many of the votes eliminated in the recount were cast out on the

merest technicalities, although the intent on them was clear. Nor does Judge Lindsey make any objection to this. But his counsel *do* point out that in none of the cases cited as examples by Graham or the Klan's counsel—and, they state that the latter had cited practically every one in the United States that has any bearing on this question—was a precinct rejected where conditions were such as in Precinct J-6 on November 3, 1924.

Naturally, you are curious as to the personality of the six judges who have made the decision and who will consider the rehearing. Chief Justice H. P. Burke is a conventional and conservative man, one of the two who held that when the case was once dismissed the court had no right to reinstate it; and about Judge John Campbell I was unable, in my limited time, to get much authentic information. Of the other four, Judge John T. Adams is known to be a Klansman and was supported by the Klan in 1924, when Lindsey publicly denounced the men on its ticket as Klansmen, including Judge Adams himself. He is just an ordinary type of politician, who has been in the game for years, and comes from Alamosa. Judge John H. Denison is a gentleman very strict in religious matters and so temperamentally

against most of the things for which Judge Lindsey stands that his honest reaction would be almost certain. John W. Shaefor is also a conventional and conservative type; and also he is a consistent friend of the corporations, against which Lindsey has frequently done battle. Greeley W. Whitford was the judge who, during the coal strike of 1911-12 in the northern Colorado coal fields, sent some of the men to jail for contempt of court for violating an injunction which he had issued against the strikers restraining them from interfering with the non-union miners brought in by the mine owners. While these men were in jail Lindsey went to visit them there in their cells and not only openly sympathized with them but was one of those who sat on the platform at the meeting called at the auditorium to express indignation and by so doing sanctioned those who publicly denounced Whitford's action.

As you can see, there is certainly nothing in the past experiences or temperaments of these honorable justices to incline them in the least in Judge Lindsey's favor. I am not implying that they have been improperly influenced but I do say that inasmuch as they are human beings, any natural prejudice that they may have felt in the case has militated against

him. Jurists, commenting on the decision, have expressed surprise that in neither majority nor minority opinion (on the propriety or impropriety of permitting Mrs. Graham to reopen the case) was there any reference to the fact that Judge Lindsey had been given no opportunity to introduce evidence.

For this reason, as soon as the Supreme Court on January 24th, 1927, announced its decision, declaring him illegally elected, Judge Lindsey filed a petition for a rehearing. Now, three things were possible. First, the Supreme Court could have reconsidered its own decision and decided to the contrary of what it had already held, thus sustaining Judge Moore; or it could have remanded the whole case to the trial court and ordered a retrial in which Judge Lindsey would have been given an opportunity to present, for the first time, a defense. It did neither, but on February 21st refused the petition for a rehearing. The third alternative —so Judge Lindsey's lawyers think, but at the time I saw them were not yet quite certain was possible—was to take the case to the Supreme Court of the United States, on the ground that it was not due process of law to deprive a citizen of property (the back salary he is compelled to pay the Graham estate) without being

given a chance to introduce evidence on his own behalf. Also there still remains at this moment the hope for the Judge's friends that the county commissioners may be induced to appoint him to succeed himself until the next regular city and county election (Denver is a county in itself) which takes place a year from this coming November.

But to be candid, I found a general feeling that the commissioners were not any too likely to do so, and for this reason: while one of the county commissioners is elected from the city council and is its head, the other two of them are appointed by the mayor, who in this way is in a strategic position. As everyone knows, Mayor Stapleton was put into office by the Klan and for that reason and because of his alliance with the city railway company was vigorously opposed by Judge Lindsey. On the other hand, the *Denver Post* that in 1924 was antagonistic to Stapleton and later joined with Lindsey in an effort to have the mayor recalled, now, through the shifting of politics, is not only friendly to Lindsey but is also very friendly to Stapleton, and I heard it frequently expressed by the Judge's friends that this fact might be one of several possible factors which might induce Stapleton to use his influence to

have Judge Lindsey reappointed. The mayor himself comes up for re-election on May 15th of this year and there is no doubt but that, like every other candidate, his ear is very naturally tuned to catch the general sentiment. And right here is where we bump into the Judge's splendid and finely helpful views on companionate marriage, which are being used as a smoke screen from behind which the breaking, but still far from broken Klan, hurls its deadly missiles.

No later than the 17th of *this* January the Klansmen were called to their Klavern (at the Pythian Bldg., 14th and Glenarm Streets) by a fiery summons issued by Dr. Fred Arnold, now Grand Dragon of the Ku Klux Klan. This gentleman, who is the minister of a Baptist Church at Canyon City, Colorado, is reported in the press—I have the clippings by me—as having boasted "We got Lindsey out. Maybe we are after a few more scalps, but I won't mention names. 'Doc.' Locke talked too much when he headed the Klan, but I don't intend to repeat his mistake." To which the editorial comment is added: 'Dr. Locke never was so foolish as to brag about using trickery and fraud in 'getting' anybody. And no one has ever accused him of grandstanding by [illegible]

to 'wade through hot blood.'" (If Dr. Arnold is misquoted I was unable to find any evidence of his ever having denied a statement commonly reputed to him.)

The purpose of this meeting, considered important enough for a fiery summons, was to start a petition for Lindsey's recall in case, by any fluke, the Supreme Court decided to uphold the trial court's decision. (The February issue of the *Red Book* had been put on the stands on the 12th of January and all Denver was buzzing with hasty comments on the Judge's discussion of companionate marriage in that magazine—although these same ideas had caused no such excitement when his book appeared. It was on the heels of this shocked disapproval that the Supreme Court decision—heretofore withheld, was suddenly announced on the 24th.) At this Klan meeting the Reverend W. Oeschger, minister of the Highlands Christian Church of Denver, read the petition, which, I was told, was at once more or less secretly circulated.

The enmity of this Denver minister toward Lindsey is of long standing. It was he who stood up on Table Mountain in 1924 and there, before thousands of Klansmen, said in substance that Lindsey must be defeated because

he was sending Protestant white girls to the House of the Good Shepherd to work for nothing in the Catholic laundry and there to be debauched. (An assertion which had no foundation in fact, as the House of the Good Shepherd enjoys a high reputation; moreover, Judge Lindsey did not send Protestant girls there, although he did sometimes send Catholic girls there when their mothers specifically requested it.) At that time the Reverend Oeschger's whole quarrel with Judge Lindsey was based solely on Judge Lindsey's valiant fight against the Klan, and it is the basis, too, of his present enmity.

But a minister can't very well get up in one of the leading churches in Denver and confess that this is the reason for his bitterness toward such a man as Judge Lindsey. Hardly! The public will stand for a lot from any clergyman, but not for anything quite as brazen as that. For the people of Denver have learned, through twenty-seven years of experiences to trust Ben Lindsey. Never once has he broken faith with them, nor faltered in his efforts to further the best interests of themselves, of their children and of their city. Thousands among the wealthy as well as among the poorer classes have come in contact with him, have,

indeed, gone—often secretly—to him for advice and counsel. Even at this moment, in their heart of hearts, the people of Denver love "the little judge," as they affectionately call him.

But when he came out with tentative but clear and definitely constructive suggestions for a modified marriage code to meet the modified economic conditions that confront young people—and people not so young—Reverend Oeschger found in the misrepresentations of these ideas and the resulting confusion in the public mind a weapon made to fit his hand. Even before I reached Denver I was informed, correctly as I found when I arrived at that city, that because of "Lindsey's immoral ideas," Reverend Oeschger and Father Hugh L. McMenamin were perhaps the two bitterest enemies of the Judge.

These two reverend gentlemen representing Klan and Catholic Church—the lion and the lamb, as it were—have actually joined hands and together (!) lead the movement to recall Judge Lindsey. Father McMenamin (of the Cathedral of the Immaculate Conception and whose rights as an American citizen Lindsey fought so hard to preserve) goes even further. He has issued a statement urging the abolishment of the Juvenile Court and the creation by the legislature of a domestic relations court attached to the district court. With one fell swoop he would do away with many of the fruits of a lifetime of noble effort. Indeed, Judge Lindsey has on his hands four distinct fights: (1) This bill in the legislature sponsored by Father McMenamin publicly in the

newspapers and introduced by a Klan senator; (2) the recall petition in circulation by the Klan—a movement also seconded by Father McMenamin; (3) a fight to get justice in his ouster suit; (4) and his struggle with the Catholic and Protestant fundamentalists who have banded together to defeat him at the polls a year from this November because of his views on companionate marriage.

Father McMenamin declares that his whole antagonism to Judge Lindsey dates with the publication of the latter's book, *The Revolt of Modern Youth*, and I believe him. For it is common knowledge that during twenty years he has helped in every way he could in the Judge's many splendid fights. Nor does the priest hesitate to admit that "during all these years Judge Lindsey has been a constructive force in our community and a godsend to many a boy and girl."

But because he has been for many years a supporter of the Judge, as well as because his is undoubtedly a brilliant mind, and because he is the priest of the largest Catholic cathedral in Denver, he wields a powerful influence; and at this moment is estranging from Judge Lindsay hundreds of people whom men of the type of Dr. Oeschger could never touch.

I found the Father to be a tall, thin, gray-haired, ascetic, fine-grained man, with a clear clipped voice that had in it just the faintest hint of Irish. Dressed in his long black cassock he received me in a pleasant homey study in the center of which was a large, much-used but orderly desk. I got an impression of a man

firmly convinced of his own sincerity and of his own righteousness. He was frank, courteous, and entirely logical *if* one granted his major premises; but he lives in a world of frozen ideals, as far removed from the problems of reality as is fairyland. Not that he himself would admit this, for he assured me most emphatically that in the confessional he heard much more of life as life really was lived in one year, than Judge Lindsey had heard in the whole twenty-seven years in his court room. And this, he explained, was because the Judge saw chiefly the vice while into his own ear was poured as well all the beauty and goodness of life. (An afternoon or two in the Judge's court room would soon show him how rounded is the Judge's picture.)

"Judge Lindsey's theories," Father McMenamin went on, "are opposed to the principles upon which our modern civilization has been built. The trouble with him and other reformers is that they take cognizance of existing conditions and endeavor to formulate new principles and standards to accommodate themselves to new conditions instead of correcting the conditions and making them conform to sound principles already established."

"But tell me," I asked, "just *what* it is that you object to in the Judge's idea of companionate marriage—for when all is said and done it would be a marriage." But this, it seems, is just what he would *not* grant, "because," he elucidated, "when the couple entered into it they would be doing so with an intention that would nullify the contract."

"Just what," I asked him bluntly, "is the connection between this ouster suit and the feeling caused by the opposition to Judge Lindsey's expressed ideas on marriage?"

"None whatever," returned Father McMenamin, promptly, "*but*," he added with strong emphasis on the word, "if this ouster suit had not come up a movement to recall him would have been necessary."

"Why?" I persisted. "You admit Judge Lindsey's many services to childhood and contributions toward the welfare of humanity."

"His theories corrupt youth," insisted the priest. "When we condemn a man's writings, we do condemn the man, even though, as with Judge Lindsey, his intentions and altruistic motives are of the highest." And Father McMenamin enlarged upon this idea. "Even prostitution," he went on presently, "is better than companionate marriage. You may think that an extreme statement, but I believe it; just as I believe it is better to have some drunkenness than to have prohibition."

At this he leaned forward and with uplifhted fore-finger emphasized each word, "I do not believe in sacrificing principles. It is far better to tolerate some crime, some drunkenness, some prostitution, than to sacrifice basic principles. Lindsey, to overcome vice, would shatter the very structure of society—his theory would sacrifice the principle in order to overcome the crime. The ideals of humanity must be preserved—particularly the ideal of the union of one man with one woman until death. Permanence is fundamental to the idea of real mar-

riage, and any marriage that departs from that idea is null and void. Companionate marriage would produce and countenance temporary unions entered into with the idea that they would be temporary and without any intention of procreation, which also makes them null and void. Judge Lindsey's book has actually increased the evils he is trying to cure."

I let this pass for the moment to say, "But at least he *is* trying to cure them, and that seems to be more than any priest or clergyman is doing—at least, if they have made any constructive suggestions, I haven't heard of them. Have they?"

"People must be better taught to keep the commandments of God!" he exclaimed. "What is needed is a more rigorous religious training. Judge Lindsey has confused morality with convention, and condones immorality so that the average reader would conclude that what we always believed to be sinful is merely an offense against existing conventions."

As I have told you, Father McMenamin is a very forceful person, and when he worded this complaint, to my mind he faced the issue squarely, as the Protestant churches and many people who countenance divorce and—in practice—birth control certainly do not. It is an issue which neither Judge Lindsey nor anyone who has the future of our youth deeply at heart would wish to dodge. What Father McMenamin says, the average reader would conclude, is precisely what Judge Lindsey *does wish* the reader to conclude—namely, *that what we have*

always believed to be sinful is merely an offense against existing conventions.

In other words, Judge Lindsey and the great multitude of progressive people with him hold that in itself the sex relationship is one of the most beautiful relationship that can be entered into between man and woman; that in itself it holds no element of sin; but that when it is entered into under conditions frowned upon by the current conventions and under conditions which are illegal, the results—running the gamut from social ostracism to downright tragedy—are out of all proportion in many cases to the happiness that can be gained. Therefore they would modify the conventions. As Judge Lindsey explained, "one must start somewhere in a discussion. My suggestions are put forth as this starting point. I have an open mind. They may never be accepted in their present form. But at least they are *a* remedy even if they do not prove to be *the* remedy."

"I am tired of being a stretcher bearer of youth," he went on to me simply. "I feel like a doctor in a hospital called upon to treat a patient stricken with the fever. It's important to heal the patient, but it is more important to find the causes that bring about the disease. I am going out to find those causes."

He is a delightful man, is Judge Lindsey, with steady brown eyes, often a hint of a twinkle in his clear voice which can become the essence of gentle kindliness as he talks to children—and older people, in his court. I attended one of his conference trial sessions there one whole afternoon. It was almost impossible

to realize one was in court, although there were some twenty or more people there. As each case came up, those involved in it came to the Judge's table, and, sitting around it in informal fashion, discussed with him their problems. The clerk of the court was there, too, but no jury and only in one instance—in a grand larceny case transferred down from the criminal court—was any client represented by a lawyer. As a matter of fact the lawyer only made the situation more difficult, for this nineteen-year-old girl was accused of having stolen a $50 bar pin. The girl who thus accused her was there too. Upon Judge Lindsey devolved the double task of making the first girl realize that she should make a full and free confession of the matter and restore the pin; and of making the second girl realize that no $50 pin on earth was worth what the first girl had already been put through. (She even then had been two weeks in jail and was still there.) Incidentally, it is due to Judge Lindsey that such cases can be transferred from the court in which cases are brought by Colorado "*against*" an arrested person to his own court, where the cases are brought "*in the interest*" of the person accused.

Laws have flowed from the pen of Ben Lindsey as plays once flowed from the pen of Shakespeare—and who shall say that they will not be every bit as enduring? For the last thirteen years he has had the help of one of the most beautiful characters imaginable—his wife. Mrs. Lindsey is all warmth, sweetness, and color with golden hair and blue eyes—eyes full of infinite understanding they are and as

swift in their changes of expression as a stream sparkling in the sunshine. Her desk is just outside the Judge's office. She is his secretary, and more than that. She is in very truth the other self of this man who has done so much for humanity.

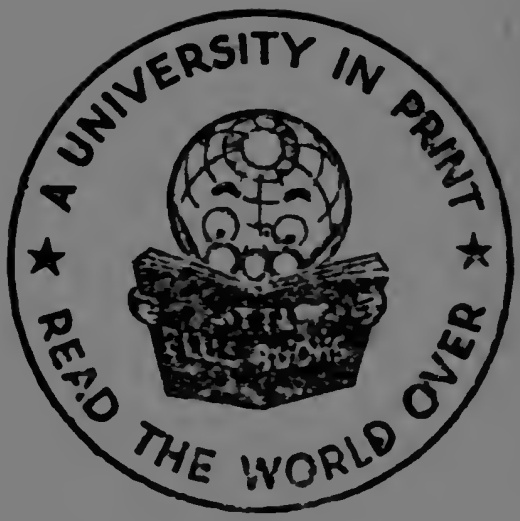
To simply catalogue clearly and comment briefly but adequately upon his definite achievements would take a book. For not only has he practically revolutionized the handling of juvenile delinquents "through original, courageous, and what even might seem audacious experiments in Denver" (to quote an official document of the United States Government), but England also has acknowledged through its Secretary of the Home Office the indebtedness of that nation to him for his influence in securing the probation laws and Children's Bill for Great Britain; and the Dominion of Canada, quite as frankly, admits the value of his influence and the use they have made of his writings for similar bills in that country. With Judge Lindsey, too, originated the idea of placing definite legal responsibility upon parents, and indeed, all persons who contribute to the trouble of children. He thinks in laws as a sculptor thinks in lines, a musician in tone, or a novelist thinks in characters. Already so many suggestions which he has put forth only to be scoffed at at first, have been accepted, that he does not lose faith even at this black moment.

It is to the youth of the country that he pins that faith, even as it is for their ultimate happiness and fullest development that he is

fighting. One has only to see him address an audience of young men and women, as I did at the School of Mines at Golden, Colorado, to see how eager they are to accept guidance from such an articulate and high-minded standard bearer. For never before has youth been so eager to realize all that is finest and best for itself. The average young person is clean minded and capable of receiving ideas and applying them to life for its betterment. Perhaps no one in this country realizes quite how eager and needy of guidance our young people are as does Judge Lindsey.

The present generation may stone him with bitter words—they are doing it. They may even crucify him; they are doing that too. For believe me, seasoned veteran of political battle through Judge Lindsey is, he is hurt to the quick by the ingratitude of the people for whom he has so often risked all that he owned and given the very life blood of his spirit. But whatever the present generation may do, the next generation—you can just depend upon it—will gratefully reap the harvest of his thinking. They will salute him for what he is, one of the most clear-visioned, noble-hearted men of this century.

The ousting of Judge Lindsey by a conspiracy of the Ku Klux Klan, will, like the imprisonment of Eugene V. Debs, go down as a blot on American history.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